

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Johnny H. Coble, Jr. and Robin Coble, both
on behalf of their minor child "J.H.C.",

Plaintiffs,

v.

Lake Norman Charter School, Inc.; Rick
Buckler, Board Chairman; Leslie Fogarty,
Board Vice-Chairman; Jared Tilley, Treasurer
and Board Member; Stephanie Painter,
Secretary and Board Member; Amy Carr,
Board Member; Ridgely Chapman, Board
Member; Jennifer Johnson, Board Member;
Greg Kilpatrick, Board Member; and
Elizabeth Timkovich, Board Member,

Defendants.

Civil Action No. 3:20-cv-00596

REPLY MEMORANDUM RE MOTION TO RECONSIDER

Defendants' Brief in Opposition to Plaintiffs' Motion to Reconsider (Doc. 34) misses the mark in several regards.

First, Defendants' Brief in Opposition construes the Plaintiffs' presentation of the case far too narrowly. While Plaintiffs have steadfastly maintained from the outset that *Lemon* does not govern this suit, Plaintiffs have repeatedly argued in the alternative that Defendants' decision to teach the *Poet X* as part of the ninth-grade language arts curriculum in a public school violates the Establishment Clause even if *Lemon* does in fact control. In fact, Plaintiffs devoted four pages of their 11-page Memorandum in Support of the Motion to Reconsider making precisely that argument. Doc. 33-1, pp. 4-7.

And second, Defendants continue to posit that the Fourth Circuit's *Wood v. Arnold* case somehow controls on the question of whether *Lemon* remains good law. That supposition simply cannot be true; as demonstrated in Plaintiffs' Memorandum in Support of the Motion to Reconsider, the parties in *Wood v. Arnold* assumed the validity of *Lemon* and presented the case exclusively under the so-called *Lemon* test. The *Wood* plaintiffs did not so much as suggest in a footnote or anywhere else that *Lemon* did not control (which is not surprising since *Wood* ran its course before the Supreme Court issued its *American Legion* opinion). Thus, neither the Fourth Circuit nor the Supreme Court was presented with any challenge to *Lemon*'s continued vitality during the course of the *Wood v. Arnold* proceedings. Put simply, *Wood v. Arnold* cannot be construed as controlling precedent on a question that was neither presented to nor ruled on by the courts during the course of those proceedings.

WHEREFORE, for the reasons stated in Plaintiffs' Motion to Reconsider and the Memorandum in Support of that Motion, Plaintiffs respectfully request that the Court enter an Order retracting its dismissal of this matter and denying Defendants' Motion to Dismiss.

This the 29th day of April, 2021.

s/Joel M. Bondurant, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on the date specified below, I electronically filed the forgoing REPLY with the Clerk of Court using the CM/ECF System, and that said Motion shall therefore be electronically served on Defendant/Plaintiff via NEF to his counsel through the Court's system at the email address counsel has registered in that system. Counsel's information is as follows:

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This the 29th day of April, 2021.

s/Joel M. Bondurant, Jr. _____
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